

**Mueller Energy Services, Inc. and International
Union of Operating Engineers, Local 17, Petitioner.** Case 3-RC-10523

May 27, 1997

ORDER AFFIRMING DISMISSAL

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

The National Labor Relations Board has considered the Petitioner's request for review of the Regional Director's administrative dismissal of the instant petition. (Relevant portions of the Regional Director's dismissal letter are attached as an appendix.) The request for review raises no substantial issues warranting reversal of the Regional Director's action. In affirming the dismissal, we agree with the Regional Director that *Angelica Healthcare Services Group*, 315 NLRB 1320 (1995), does not require that a hearing be held in the circumstances here. The Petitioner claims that, under *Angelica*, a determination of whether a contract bar exists can only be made following a hearing. The Board's reasoning in *Angelica* does not support such an interpretation. In that case, the Board held that the language of Section 9(c)(1) of the Act and Section 102.63(a) of the Board's Rules and Regulations requires that, where, following filing of a petition, the Regional Director has reasonable cause to believe that a question concerning representation exists, the Regional Director must provide for a hearing prior to finding a question concerning representation and directing an election.

Here, there was no reasonable cause to believe that the collective-bargaining agreement did not bar the petition, and, therefore, no reasonable cause to believe that a question concerning representation existed. The collective-bargaining agreement submitted by the Employer and the Intervenor, and carefully examined by the Regional Director, contained all of the elements necessary for a contract to act as a bar, and, indeed, the Petitioner did not claim to the contrary. The Regional Director concluded, based on her investigation, that there was an existing agreement barring processing of the petition. As more fully set forth in the Regional Director's dismissal letter, in its response to the Notice to Show Cause, the Petitioner, unlike the union in *Angelica*, did not raise any substantial and material factual issues, and did not even dispute the existence of a valid collective-bargaining agreement barring the petition. In its request for review, the Petitioner again does not dispute the findings regarding the collective-bargaining agreement or suggest any other reason that the collective-bargaining agreement might not be valid or a bar to the instant petition. Accordingly, we conclude that the Regional Director's dismissal of the petition without a hearing was proper.

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APPENDIX

REGIONAL DIRECTOR'S DISMISSAL LETTER

....

As a result of such investigation and consideration, I have concluded that further proceedings on the petition are not warranted for the reasons which follow:

The petition was filed on February 27, 1997, by the International Union of Operating Engineers, Local 17 (Local 17), seeking to represent a unit of all full-time and regular part-time operators, laborers, and drivers employed by the Employer. Following a preliminary investigation of the petition, it was established that Oil, Chemical and Atomic Workers International Union, AFL-CIO, Local 8-215 (Local 8-215) is the currently recognized collective-bargaining representative of employees covered by the petition and that there currently exists a collective-bargaining agreement between the Employer and Local 8-215 which covers terms and conditions of employment of the employees involved herein, and which, by its terms, runs from January 1, 1995, until December 31, 1998.

Accordingly, on March 14, 1997, I issued a Notice to Show Cause giving the parties until close of business on March 21, 1997, to demonstrate in writing why the above-described collective-bargaining agreement should not serve as a bar to the further processing of the petition.

Thereafter, both the Employer and Local 17 submitted written responses to the Notice to Show Cause. In its position statement, the Employer argues that the collective-bargaining agreement is a bar to the further processing of the petition, and that the petition should be dismissed. In its position statement, Local 17 does not address the contract bar issue but merely states that it is "requesting a hearing based on *Angelica Health Care*" and that "a hearing will allow the parties to explore the issues at hand." Apparently, the reference to "*Angelica Health Care*" is to the Board's decision in *Angelica Healthcare Services Group*, 315 NLRB 1320 (1995). In that case, following an administrative investigation of a decertification petition, the Regional Director found that an existing contract was not a bar to the processing of the petition, and rejected the incumbent union's contention, filed in response to an Order to Show Cause, that the petition was untimely because it was barred by the existing contract. Accordingly, the Regional Director found that a question affecting commerce existed concerning the representation of the employees involved, within the meaning of Section 9(c)(1) of the Act and directed an election. The Board reversed the Regional Director and held that the language of Section 9(c)(1) of the Act and Section 102.63(a) of the Board's Rules and Regulations required that the Regional Director conduct a formal hearing prior to finding that a question concerning representation (QCR) existed, and prior to directing an election.

Based on the facts present in the instant case, which are apparently not in dispute, as no party has raised such in response to the Notice to Show Cause, I have concluded that the Board's decision in *Angelica Healthcare Services Group* is distinguishable, and does not require me to conduct a formal hearing on the petition. Thus, inasmuch as I have concluded that the aforementioned collective-bargaining agreement is a bar to the petition at the present time, no QCR ex-

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ists at this time. Accordingly, in the absence of a QCR, I am not required under either Section 9(c)(1) of the Act or under Section 102.63(a) of the Board's Rules and Regulations to conduct a formal hearing.

Accordingly, based on the foregoing, I am hereby dismissing the petition, inasmuch as the existing collective-bargaining agreement is a bar to its processing, and no QCR exists at this time.